

**Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America and Delran Builders Company, Inc. and Hough/Loew Construction, Inc.** Cases 4-CB-5935, 4-CB-5986, and 4-CC-1879

April 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On November 15, 1990, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief. Charging Party Hough/Loew filed a brief answering the Respondent's exceptions and supporting the General Counsel's exceptions. The Respondent filed a brief answering the General Counsel's exceptions.

On June 4, 1991, the Board remanded this proceeding to Judge Gross in order that he might make credibility resolutions and further factual findings, make commerce findings,<sup>1</sup> and resolve an alleged violation of Section 8(b)(4)(i)(B). On August 15, 1991, Judge Gross issued the attached supplemental decision. The Respondent and the General Counsel each filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decisions and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

As described more fully in the judge's decisions, these cases arise from events surrounding the Respondent's picketing of Delran Builders Company, Inc. in October 1989, and its picketing of Hough/Loew Construction, Inc. in January 1990.

<sup>1</sup> Although directed by our remand Order to make commerce findings regarding Delran and Hough/Loew, the judge failed to do so. Delran is a Pennsylvania corporation engaged in construction, with offices in Flourtown, Pennsylvania. During the year before the hearing, Delran performed services valued in excess of \$50,000 for customers located outside of Pennsylvania. Hough/Loew is a corporation engaged in construction, with offices located in Exton, Pennsylvania. During the year, before the hearing, Hough/Loew paid Vineland Glass of Vineland, New Jersey, in excess of \$65,000 for services performed by Vineland Glass in Pennsylvania. We conclude that both Delran and Hough/Loew are employers engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. *Siemons Mailing Services*, 122 NLRB 81 (1958); *Carpenters (Reeves, Inc.)*, 281 NLRB 493 (1986). We further conclude that the Respondent is a labor organization within the meaning of Sec. 2(5) of the Act.

With respect to the picketing of Delran, the judge found, and we agree, that the Respondent violated Section 8(b)(1)(A) of the Act by blocking ingress to the jobsite and by threatening violence, within earshot of an employee, against a supervisor who was photographing the pickets. The judge also found, and again we agree, that the Respondent's business agent did not violate Section 8(b)(1)(A) by uttering a Delran supervisor's home address to a police officer. We also agree with the judge that the Respondent's pickets did not violate the Act by shouting certain statements at Delran employees, because the pickets here were as likely as not responding to similar shouted remarks directed at them by the employees.

Finally, in regard to Delran, the judge concluded that the General Counsel established that the Respondent's agents padlocked a door while Delran employees were inside the building, thereby blocking egress in violation of Section 8(b)(1)(A). The Respondent has excepted to this finding. We find merit in the Respondent's exception.

The judge noted that the door was padlocked at a time when agents of the Respondent were picketing the corresponding site entrance and that no agent of the Respondent testified that the Respondent had no hand in the padlocking or that it was done by a third party. We note, however, that there is no evidence that anyone saw an agent of the Respondent padlock the door. While the circumstances are suspicious, the evidence is insufficient to warrant the inference that the padlocking is attributable to the Respondent. Accordingly, we dismiss the complaint's allegation in this regard.

With respect to the allegation that an object of the picketing was to force Hough/Loew (the neutral) to cease doing business with Pelliccio (the primary), the judge found, and we agree, that the picketing had that objective. However, unlike the judge, we do not rely principally upon the fact that the Respondent picketed so as to block the gate. Since the gate was the sole entrance to the facility and was therefore used by the primary, the Respondent had a right to picket that gate so long as it was pursuing only lawful, primary objectives. And, the fact that the picketing blocked that entrance, in violation of Section 8(b)(1)(A), does not support the proposition that the picketing was for a secondary objective. See *NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951). Rather, in support of the finding of secondary objective, we rely upon the January 4 conversation, recounted in the judge's supplemental decision, between Hough/Loew President Dale Good and Respondent Business Representative William Barnett. In that conversation, Barnett indicated that the Respondent wanted Hough/Loew to replace the nonunion subcontractor, James Pelliccio. In our view, Barnett's statements clearly showed that the

picketing had a secondary objective. To be sure the blocking of the gate, used by neutrals and the primary alike, is consistent with the finding that the picketing had a secondary objective. However, to –repeat, our finding of secondary objective is based principally on the conversation between Barnett and Good.

Based on the above, we conclude that the Respondent violated Section 8(b)(4)(ii)(B) of the Act by threatening, coercing, or restraining Hough/Loew with an object of forcing or requiring Hough/Loew to cease doing business with Pelliccio.

Although directed by our remand Order to resolve the 8(b)(4)(i)(B) complaint allegation with respect to the picketing of Hough/Loew, the judge failed to do so. The complaint alleges, inter alia, that in blocking employees' ingress to the jobsite and in inducing and encouraging employees to refuse to perform services at the jobsite, the Respondent had as an object forcing or requiring Hough/Loew to cease doing business with Pelliccio. We find that, in addition to violating Section 8(b)(4)(ii)(B) of the Act by threatening, coercing, or restraining Hough/Loew with an object of forcing or requiring Hough/Loew to cease doing business with Pelliccio, the Respondent, with the same object, picketed so as to block employees' ingress and induced and encouraged employees to refuse to perform services at the jobsite, in violation of Section 8(b)(4)(i)(B).

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, the Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

“(a) Restraining and coercing employees of Delran Builders Company, Inc. in the exercise of the rights guaranteed them by Section 7 of the National –Labor Relations Act by blocking ingress onto jobsites, threatening to inflict physical harm, or in any like or related manner restraining or coercing Delran employees in the exercise of their Section 7 rights.”

2. Substitute the following for paragraph 1(c) and (d).

“(c) Threatening, coercing, and restraining Hough/Loew, Delmont Mechanical, Plumbing Systems, William Malany & Sons, Commonwealth Fire Protection, R.L. Associates, Vineland Glass, or any other person engaged in commerce or in an industry affecting commerce where the object thereof is forcing or requiring any person engaged in commerce or in an in-

dustry affecting commerce to cease doing business with James Pelliccio.

“(d) Inducing or encouraging Hough/Loew employees to refuse to perform services at jobsites, with an object of forcing or requiring anyone engaged in commerce or in an industry affecting commerce to cease doing business with James Pelliccio.”

3. Substitute the attached Appendices A and C for Appendices A and C of the administrative law judge.

#### APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT block ingress to jobsites of Delran Builders Company.

WE WILL NOT threaten to physically harm any Delran employee or supervisor.

WE WILL NOT in any like or related manner restrain or coerce Delran employees in the exercise of their Section 7 rights.

METROPOLITAN DISTRICT COUNCIL OF  
PHILADELPHIA AND VICINITY, UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA

#### APPENDIX C

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce when in either case an object is to force or require any person engaged in commerce or in an industry affecting commerce to cease doing business with carpentry contractor James Pelliccio.

WE WILL NOT induce or encourage employees of Hough/Loew Construction, Inc. or of its subcontractors to refuse to perform services at jobsites, with an object of forcing or requiring anyone engaged in commerce

or in an industry affecting commerce to cease doing business with James Pelliccio.

METROPOLITAN DISTRICT COUNCIL OF  
PHILADELPHIA AND VICINITY, UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA

*Henry R. Protas, Esq.*, for the General Counsel.

*Richard C. McNeill, Jr., Esq.*, of Philadelphia, Pennsylvania,  
for the Respondent.

*Lawrence Coburn, Esq. (Pepper, Hamilton & Scheetz)*, of  
Philadelphia, Pennsylvania, for the Charging Parties.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. The General Counsel alleges that the Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) in its picketing of Delran Builders Company and Sections 8(b)(1)(A) and 8(b)(4)(B) of the Act during the course of its picketing of a construction site at which Hough/Loew Construction, Inc. was the general contractor.<sup>1</sup>

For the reasons discussed below, I conclude that the Union did violate Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of the Act, although not in all the respects alleged by the General Counsel.<sup>2</sup>

I. THE UNION'S PICKETING OF DELRAN

What Happened

Delran is in the construction business in the Philadelphia area as a contractor. Its employees are not represented by a union. In August 1989 Delran began renovation work on a building at Third and Market Streets in Philadelphia. (The events discussed in this decision that involved Delran occurred only at that site and only in 1989.)

James Dougherty is a business representative of the Union. Dougherty has long been aware that Delran is nonunion, and

<sup>1</sup> No one disputes the General Counsel's claim that, for purposes of the Act, the Union is a "labor organization." Although the Union initially disputed the General Counsel's allegation that Delran and Hough/Loew are "employers" engaged in commerce, the Union subsequently advised that it would not contest that allegation. See Tr. 141-142 and 304.

<sup>2</sup> I held a hearing in this proceeding in Philadelphia on May 21 and 22, 1990. The procedural events that led to that hearing were as follows:

10/11/89 charge in Case 4-CB-5935 filed by Delran; 11/8/89 complaint in Case 4-CB-5935; 1/3/90 charge in Case 4-CC-1879 filed by Hough/Loew; 1/4/90 charge in Case 4-CB-5986 filed by Hough/Loew; 2/2/90 consolidated complaint in Cases 4-CB-5986 and 4-CC-1879.

These proceedings had been consolidated with Cases 4-CC-1873 and 4-CC-1887, involving charges filed by Eastview Realty Associates LP. But on May 18, 1990, pursuant to Eastview's request for withdrawal of the charges (which stemmed from an agreement between the Union and Eastview), the Acting Regional Director for Region 4 severed those two cases, granted Eastview's withdrawal request, and dismissed the complaint.

The General Counsel, the Union, and Delran have filed briefs.

he learned of Delran's work at Third and Market not long after it began. Then, in October, he noticed that carpentry work was being done on the site. Dougherty decided to get up a picket line there.

*The picketers block Phillips' ingress.* Delran employed about a dozen workers at the site. Delran employee Joseph Phillips was the first to encounter the picket line. The date: October 10; the time: about 6:20 a.m. Delran had surrounded the jobsite with an 8-foot high plywood wall. There were two openings through that wall, one on Market Street, one on Third Street, each roughly 50 feet from the corner. The openings were 4 feet wide. Each had a door hinged to open inward.

As Phillips approached the Market Street entrance to the site he saw three men—picketers—standing shoulder-to-shoulder in front of the entrance. The men were carrying area standards signs. The entrance's door was closed. One of the picketers told Phillips that the three men were on a picket line and asked Phillips to respect it. But Phillips indicated that he wanted to enter the site. The picketers didn't move.

Phillips knew that his boss, Jeffry Levy, was already on the site. Phillips called to Levy. After a few minutes Levy opened the door to the Market Street entrance and told Phillips to push his way past the picketers. As Phillips tried to make his way into the building the picketers braced themselves but otherwise did nothing to prevent his entry, either physically or verbally. The result was that while Phillips did have to lean against the picketers in order to get past them, he was able to enter the jobsite.

*The picketers block Rush's ingress.* Delran employee John Rush arrived at the site at 6:55 a.m. on October 10. When he saw three picketers standing in front of the Market Street entrance he went over to the Third Street entrance. But three picketers were standing shoulder-to-shoulder in front of that entrance too. He indicated to the Third Street picketers that he wanted to enter the site—by saying "excuse me"—but the picketers wouldn't move. It seemed to Rush, and, certainly, it was a reasonable perception, that the only way he could have entered the building would have been to use force to get past the picketers.

Rush saw some other Delran employees standing at the corner of Third and Market Streets. He joined them. A couple minutes later Levy (the Delran supervisor) came to the corner, said "let's go to work, guys," and headed for the Market Street entrance. The employees followed him. The picketers remained in front of the entrance. But as Levy, Rush, and the other employees approached, the picketers made enough room for all the members of the Delran contingent to enter the site without having to push their way through. And Levy and the employees did enter the building.

*The picketers-Becker incident.* John Becker is Delran's general superintendent. He arrived at the site about 7 a.m. on October 10 and had no trouble entering. Later that morning he exited the building (again with no trouble), camera in hand, to take photographs of the picketers. Becker was accompanied by Phillips.

After Becker had taken a photograph or two of the three Third Street picketers, one of the picketers cursed Becker and said, "if you take another picture we're going to kick your ass." Becker did take another photograph. The picketers did not attack him.

At that point Phillips, without incident, re-entered the building through the Third Street entrance, turned, and waited for Becker. But as Becker tried to follow Phillips into the building the picketers moved to block his way, standing close together in front of the entrance. Becker tried to push his way between the picketers but initially could not get past them. A few minutes later the picketers did let Becker through, perhaps because the picketers noticed that Levy, from inside the building, was taking photographs of the situation.

*The Dougherty-Levy incident.* Two police officers from Philadelphia's Civil Affairs unit arrived at the site on the morning of October 10. With Levy and Rush standing near some picketers and Dougherty (the union business representative) outside the site, one of the officers asked Levy to identify himself. At that point Dougherty said "Jeff Levy" and then stated Levy's address—or rather misstated Levy's address. (Dougherty had it almost correct.) Levy had never told Dougherty where he lived.

*The locked door.* The two doors at the entrances to the site are fitted with hasps so that Delran can padlock them shut, from the outside, at night. Early on the morning of October 11 Levy, as usual, removed the padlocks. But about the middle of the day Delran personnel noticed that the Market Street door was locked shut. Rush and Levy exited the building through the Third Street entrance, went around to the Market Street entrance, and saw that the door was padlocked shut. The lock was not one of Delran's. Several of the picketers, and no one else, were in the vicinity of the entrance. Rush and Levy used bolt cutters to remove the padlock.

#### The Union's Violations of Section 8(b)(1)(A)

*Agency issues.* The picketers were unemployed members of the Union or retired members of the Union. They were present at the Delran jobsite because the Union had asked them to picket the site. The purpose of the picketing was to benefit the Union and its members. That alone would make the picketers the agents of the Union for 8(b)(1)(A) purposes. *Carpenters (Reeves, Inc.)*, 281 NLRB 493 (1986). (That case involved, among other things, the Union's picketing of Delran; I accordingly will refer to it as *Delran I.*)

In any case, I am convinced that initially Dougherty indicated to the picketers that they should stand shoulder-to-shoulder in front of the entrances to the site or, at least, that it was alright with him if they did so.

*Blocking ingress.* Picketers prevented a Delran supervisor (Becker), in the presence of a Delran employee (Phillips), from entering the jobsite. That's a violation of Section 8(b)(1)(A). *Delran I.* Picketers stood in such a way as to require a Delran employee (Phillips) to push against them in order to enter the jobsite. That's a violation of Section 8(b)(1)(A). *Id.* And picketers stood in front of the entrances to the site that a Delran employee (Rush) reasonably believed that he would have to use force to enter. That is a violation of Section 8(b)(1)(A). *Id.*

*Blocking egress.* The record supports the General Counsel's contention that agents of the Union padlocked the Market Street door at a time when Delran employees were inside the building: It is clear that someone not employed by Delran padlocked the door at a time when agents of the Union were picketing that entrance. And no agent of the Union in a posi-

tion to know testified either that the Union had no hand in the padlocking or that it was done by some third party.

I find that a union's unauthorized padlocking of one of two doors to a jobsite while employees are on the site may reasonably restrain or coerce employees in the exercise of their Section 7 rights and therefore conclude that for this reason too the Union violated Section 8(b)(1)(A).

*Threats of violence.* A picketer told a Delran supervisor (Becker) that "if you take another picture we're going to kick your ass." A Delran employee (Phillips) was within earshot. That amounts to a violation of Section 8(b)(1)(A). *Id.*

In the presence of a Delran employee (Rush), Dougherty gratuitously let a Delran supervisor (Levy) know that Dougherty knew—or thought he knew—where the supervisor lived. I can understand that Levy might be concerned to learn that Dougherty knew where he (Levy) lived, particularly given the on-going picketing. But I do not understand that the utterance by a union agent of a supervisor's home address necessarily violates the Act no matter what the circumstances. And here the record fails to show that there was anything menacing about Dougherty's demeanor when he spoke the address or that Dougherty accompanied the utterance of the address with other threatening language. Moreover, Dougherty was speaking to a police officer when he stated what he thought was Levy's address. I accordingly conclude that Dougherty's utterance of Levy's address did not violate Section 8(b)(1)(A).

#### The General Counsel's Other Allegations Regarding the Union's Picketing of Delran; The Union's Contentions

On at least two occasions the picketers yelled at Delran employees that "you could get hurt working inside that building." But on the record before me, it is at least as likely as not that the picketers uttered those words in response to insults and threats made against them by Delran employees.

Witnesses for the Union testified that whatever strong words the picketers might have used toward Becker were in response to Becker's own provocative words and actions. I do not credit that testimony.

Union witnesses also testified that the picketers never purposefully blocked any entrance to the Delran jobsite. The only possible blocking, they contended, occurred when the picketers stood in the entrances to the site to make room for pedestrians to pass. And that happened, so the Union claims, because of the cramped situation at the site caused by a combination of, on the one hand, heavy pedestrian traffic and, on the other, reductions in usable sidewalk area caused by the scaffolding around the building. I do not credit that testimony either.

## II. THE UNION'S PICKETING OF HOUGH/LOEW

### What Happened

Hough/Loew is in the construction business as an architectural firm and general contractor. Hough/Loew typically contracts out to subcontractors almost all construction work. Hough/Loew's employees are not unionized. And while Hough/Loew sometimes does use unionized subcontractors, most its subcontractors are not unionized. On a number of occasions Hough/Loew used a firm owned by James Pelliccio as its carpentry subcontractor. Pelliccio's employees

are not represented by a union. The only incidents we are concerned with here occurred on January 3 and 4, 1990, at a Hough/Loew construction site in Devault, Pennsylvania. The site was accessible only via one road, the Phoenixville Pike. The building that Hough/Loew was constructing on the site was about 1000 feet from the Phoenixville Pike. Two 20-foot wide driveways ran from the Pike to the building. But during the period of concern to us, one of the driveways was unusable, obviously so. So anyone wanting to drive onto the site had only one driveway to use. (I will henceforth refer to it as "the driveway.")

Hough/Loew had a couple of its own employees and a project superintendent working at the site. Everyone else working at the site was employed by the following subcontractors:

Company	Nature of work
Nonunion	
James Pelliccio	carpentry
Delmont Mechanical	heating & air conditioning
Plumbing Systems	plumbing
William Malany & Sons	electrical
Commonwealth Fire Protection	sprinkler systems
Unionized	
R. L. Associate	roofing
Vineland Glass	window

Almost everyone who worked at the site for Hough/Loew or its subcontractors drove onto the site. In fact there was no convenient offsite parking.

*The events of January 3.* On January 2 officials of the Union told one of its organizers, George Wright, to set up an informational picket line at Hough/Loew's Phoenixville Pike site. At the time the Union knew that Pelliccio was doing the carpentry work on the site and believed that Pelliccio paid its employees below scale wages. (No one contends that that belief was groundless.)

Wright set up the picket line at about 6:30 the following morning manned by unemployed members of the Union. About six of the picketers carried signs, all of which said that Pelliccio paid unfair, substandard, wages. A Hough/Loew employee walked onto the site. (He had apparently gotten a ride to the site.) He passed through the picket line without incident. The next person to arrive drove a pickup truck onto the site. According to Wright, when he moved toward the truck in order to tell the driver what the purpose of the picketing was, the driver accelerated, hitting Wright and knocking him up over the hood of the truck and onto the ground.

Ken Smith is Hough/Loew's general superintendent. He got to the site not long after 7 a.m. He saw about 15 or 20 men milling around on the driveway. As it turned out, only about 13 were members of the Union. The others were R. L. Associates employees who stood for a time with the carpenters on the picket line.

A vehicle could not have entered the site without hitting some of the men on the driveway. And, in fact, the only em-

ployees on the site were the ones who walked on and the other who drove the truck that hit Wright.

Smith spoke to Wright, who told Smith that the Union was picketing Pelliccio. Smith asked Wright if "you are going to let us go to work today." Wright responded:

I'd let you in here, but we had a little incident here this morning. A guy came through across this picket line and I twisted my back trying to jump out of the way of the truck.

Dale Good is Hough/Loew's president. He arrived at the site around 7:45 a.m. At the time there were 13 picketers on the driveway. They took up the full width of the driveway and were stationed a couple feet from one another. A vehicle could not have driven onto the site without hitting some of the picketers.

Only the initial two employees were on the site. A number of employees of Hough/Loew and its subcontractors were standing at the edge of the road near Good.

Wright complained to Good about being hit by the truck of someone who crossed the picket line. Good asked if there was some way Hough/Loew and the Union "could work something out" and talked about the fact the Hough/Loew sometimes did use unionized carpenters. The principal thrust of Wright's reply was that he wasn't there to resolve anything, that he was there to protest Pelliccio's wages. But in response to Good's remarks about Hough/Loew using unionized labor, Wright complained that Hough/Loew was "anti-labor" and that Hough/Loew hadn't given any unionized carpentry contractors a chance to bid on the Phoenixville Pike job.

No work was performed on the site on January 3.

*The events of January 4.* The Union had 15 or 20 picketers on the driveway to the site by 6:45 a.m. Wright's injuries from the day before kept him away. Union organizer Harry McGuckin was at the site, as was Union Business Representative William Barnett. Good (Hough/Loew's president) spoke to Barnett, asking why the Union was picketing the site. Barnett made it clear that his concern was with Pelliccio. Good then repeated what he had said the day before about Hough/Loew sometimes using unionized subcontractors (which Barnett knew to be the case). Barnett responded that the owner of the property had promised the Union that unionized carpentry contractors were going to be invited to bid on the work at the site and that had not happened.

Good testified that Barnett proposed that Hough/Loew switch the carpentry work at the site to a unionized subcontractor but that Good refused. It seems likely to me, however, that Good misremembered that part of the conversation. Barnett testified that Good asked if Barnett was going to keep the employees off the site and that Barnett replied, "I'm not stopping anybody." I do not credit that testimony.

About 7:30 a.m. some Hough/Loew and subcontractor personnel formed a column of trucks in a parking lot near the Phoenixville Pike site. Smith (Hough/Loew's general superintendent) in the first truck; a Hough/Loew supervisor and a Hough/Loew employee in the second; Pelliccio in the third truck; some Pelliccio employees in the fourth and fifth trucks; lastly another truck or two with employees of subcontractors other than Pelliccio.

The line of trucks moved onto Phoenixville Pike, heading for the site. Smith turned his truck left, onto the site. Smith

was closely followed by the other Hough/Loew truck. As Smith's truck got to the driveway the picketers began walking back and forth across the driveway. Since Smith could not proceed without hitting some picketers, he stopped. That left the second Hough/Loew truck partially on the Pike. The other trucks remained in the left-turn lane on the Pike. Smith yelled "let me through" and inched forward. The picketers stayed on the driveway, and Smith's forward motion ended on the driveway a few feet into the site, with the truck touching, or nearly touching, some of the picketers. A couple minutes later the two Hough/Loew trucks backed up and drove away. The subcontractors' trucks followed.

Barnett and McGuckin watched the entire episode. They saw that Smith was driving the first truck. They did not know whether any of the trucks in the line carried Pelliccio personnel.

Later that day Hough/Loew obtained a restraining order from a county judge that limited the number of picketers and prohibited them from blocking the entrance to the site. The Union honored that order. Picketing continued until January 17. Neither Hough/Loew nor any subcontractor had any trouble getting onto or off the site.

#### The Union's Violations of Section 8(b)(1)(A)

On January 3 union picketers stood or walked on the one driveway leading to the construction site in such a way as to preclude the passage of vehicles. Additionally, a Union organizer stated to a Hough/Loew supervisor that he was not going to let personnel employed by Hough/Loew and its subcontractors onto the site. Hough/Loew and its subcontractors had been planning to perform work at the site on January 3. But because of the picketers' presence on the driveway, no work got done. Employees of Hough/Loew and its subcontractors witnessed these circumstances.

That amounts to a violation of Section 8(b)(1)(A). See *Service Employees Local 254 (Massachusetts Institute of Technology)*, 218 NLRB 1399, 1401 (1975).

The Union's violation of Section 8(b)(1)(A) on January 4 is even clearer. On that day the picketers deliberately stood in front of a Hough/Loew vehicle that was attempting to enter the jobsite. Again, employees of Hough/Loew and its subcontractors witnessed the circumstances.

#### The Union's Violations of Section 8(b)(4)(ii)(B)

Section 8(b)(4)(ii)(B) provides, in pertinent part:

It shall be an unfair labor practice for a labor organization or its agents—

. . . .

to threaten, coerce, or restrain any person . . . where . . . an object thereof is:

(B) forcing or requiring any person to . . . cease doing business with any other person . . . .

On this record the Union's dispute with Pelliccio was a lawful one and the Union accordingly had the right to picket the site with signs complaining of Pelliccio's below-par wages.<sup>3</sup> But Hough/Loew and its other subcontractors were

neutrals.<sup>4</sup> Accordingly, the Union violated Section 8(b)(4)(ii)(B) if its agents uttered words or undertook actions—beyond the picketing itself—that indicated that an object of the Union was to cause a disruption in Hough/Loew's relationship with Pelliccio.<sup>5</sup>

I do not interpret anything that Wright or Barnett said as evidencing any such secondary objective.

But the Union's actions are another matter.

Had a union agent told the employees of Hough/Loew and its subcontractors that it wanted them to stay off the job so long as Pelliccio remained a subcontractor, the Union would thereby have indicated its unlawful secondary objective. *Electrical Workers IBEW Local 369 (Garst-Receveur Construction)*, 229 NLRB 68 (1977), *enfd. per curiam* 609 F.2d 266 (6th Cir. 1979). Here the Union picketed the site in such a way as to prevent all personnel of Hough/Loew and its subcontractors from entering the site and, indeed, knowingly prevented Hough/Loew trucks from entering the site. That action, coupled with the anti-Pelliccio picket signs and the statements of Wright and Barnett that the Union's dispute was with Pelliccio, unmistakably was a deliberate communication by the Union to Hough/Loew and its subcontractors that they should cease doing business with Pelliccio.

I realize that *Rice Milling*<sup>6</sup> and *Carrier*<sup>7</sup> might be read to suggest otherwise. Both tell us that picketing that would otherwise be solely primary does not become secondary merely because it is conducted in an unlawful manner. And apart from the picketers' blocking of the driveway, the picketing here met *Moore Dry Dock* standards.<sup>8</sup>

But both *Rice Milling* and *Carrier* involved the efforts of striking employees to prevent transportation companies from supplying the struck company. In those circumstances the striking unions could lawfully have as an object the prevention of such business. That is not the case here.

I accordingly conclude that the Union violated Section 8(b)(4)(ii)(B) of the Act.

#### Agency Issues

For the reasons discussed in part I, above, in connection with the picketing at the Delran site, I conclude that the picketers at the Hough/Loew site were agents of the Union. Beyond that, officials of the Union watched as the picketers stood in such a way as to prevent entry on to the site.

The Union argues that Wright was not acting as an agent of the Union when he told Smith, on January 3, that, because of Wright's being run down by a Hough/Loew employee, he was going to prevent personnel of Hough/Loew and its subcontractors from entering the site. I do not agree. Wright was a paid official of the Union. The Union put him in charge of the picketers at the Hough/Loew site. And he and the picketers were at the site to further the Union's purposes. In those circumstances Wright and the picketers would be agents of the Union even assuming that the record showed that Wright's superiors were aghast at Wright's statement. As a matter of fact, of course, the events of January 4 showed

<sup>4</sup> E.g., *Electrical Workers IBEW Local 441 (Rollins Communications)*, 208 NLRB 943 (1974).

<sup>5</sup> *Id.*

<sup>6</sup> *NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951).

<sup>7</sup> *Steelworkers v. NLRB*, 376 U.S. 492 (1964).

<sup>8</sup> See fn. 3, above.

<sup>3</sup> See *Sailors Union (Moore Dry Dock Co.)*, 92 NLRB 547 (1950).

that Wright's remark about preventing entry onto the site was wholly in line with the Union's objectives.

#### REMEDY

For the reasons discussed in *Delran I*, the recommended Order requires the Union to cease and desist from its unlawful actions at all Delran and Hough/Loew jobsites. The General Counsel urges that that recommended Order also require the Union to cease and desist from its unlawful behavior toward Pelliccio. Given the Union's actions at the Hough/Loew jobsite, the recommended Order does effectuate that proposal.

Delran urges me to require "the Union to pay Delran's reasonable attorneys' fees," pointing out that the Union's unlawful actions toward Delran violated the cease-and-desist order in *Delran I*. But it does not appear to me that a few relatively mild violations of the *Delran I* Order more than 3 years after the issuance of that Order and more than 5 years after the union actions that were the subject of that order, warrant the award of attorneys' fees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

#### ORDER

The Respondent, the Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, its officers, agents and representatives, shall

##### 1. Cease and desist from

(a) Restraining and coercing employees of Delran Builders Company, Inc. in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act by blocking ingress onto or egress from jobsites, threatening to inflict physical harm, or in any like or related manner restraining or coercing Delran employees in the exercise of their Section 7 rights.

(b) Restraining and coercing employees of Hough/Loew Construction, Inc., and of Hough/Loew's subcontractors, in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act by blocking ingress to Hough/Loew jobsites, or in any like or related manner restraining or coercing the employees of Hough/Loew or its subcontractors in the exercise of their Section 7 right.

(c) Threatening, coercing, and restraining Hough/Loew, Delmont Mechanical, Plumbing Systems, William Malany & Sons, Commonwealth Fire Protection, R. L. Associates, Vineland Glass, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is forcing or requiring such person to cease doing business with James Pelliccio.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at all its business offices in Philadelphia, Pennsylvania, copies of the attached notices marked "Appendices A,

B and C."<sup>10</sup> Copies of the notices, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 4 signed copies of the notices for posting, if the companies listed below are willing, in places where notices to employees are customarily posted. Copies of the notices, on forms provided by the Regional Director, after having been signed by the Respondent's representatives, shall be forthwith returned to the Regional Director for such posting by such companies.

<i>Company</i>	<i>Applicable notice(s)</i>
Delran Builders Co.	Appendix A
Hough/Loew Construction, Inc.	B and C
James Pelliccio	B and C
Commonwealth Fire Protection	B and C
Delmont Mechanical	B and C
Plumbing Systems	B and C
R. L. Associates	B and C
Vineland Glass	B and C
William Malany & Sons	B and C

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT block ingress to jobsites of Hough/Loew Construction, Inc.

WE WILL NOT in any like or related manner retrain or coerce the employees of Hough/Loew or its subcontractors in the exercise of their Section 7 rights.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY, UNITED BROTHERHOOD OF CARPENTER AND JOINERS OF AMERICA

<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## SUPPLEMENTAL DECISION

## I

STEPHEN J. GROSS, Administrative Law Judge. This case is about certain incidents that occurred at a Delran construction site in October 1989 and at a Hough/Loew construction site on January 3 and 4, 1990. I issued a decision in this matter on November 15, 1990. Then, on June 4, 1991, the Board remanded the proceeding back to me.

The remand concerns only the incidents at the Hough/Loew site and, specifically, only the testimony of Dale Good, William K. Smith, George L. Wright, and William J. Barnett about conversations that occurred at the site. The reason for the remand is that (in the words of the Board's Order), in my decision I—

did not discuss all of the conflicting testimony about what was said in the conversations relevant to the issue of the Union's motive in picketing, did not make credibility resolutions regarding this testimony, and did not address the significance of the testimony which [I] did credit.

The Board accordingly ordered me to consider and make credibility resolutions regarding such testimony—that is, regarding the testimony of Good, Smith, Wright, and Barnett about conversations that occurred at the Hough/Loew site on January 3 and 4, 1990.

The four named witnesses testified about, in the aggregate, four relevant conversations on the 2 days at issue. The following part of this decision sets forth my findings about who said what to whom in each of those conversations.

## II

I will assume that the reader is familiar with my November 15, 1990 decision in this matter. Nonetheless some background discussion may be useful to include here. (All of this background information is taken from the November 15 decision; I do not intend to be making new findings in these respects.)

First, here is some information about the four witnesses whose testimony is to be considered in this supplemental decision.

1. William Barnett: business representative for (and agent of) the Union.
2. Dale Good: President (and supervisor and agent) of Hough/Loew.
3. William (Ken) Smith: Hough/Loew's "general superintendent" (and a Hough/Loew supervisor and agent).
4. George Wright: A paid, full-time organizer for (and agent of) the Union.

Secondly, the conversations all occurred near (or on) the one driveway onto a construction site. Hough/Loew was the general contractor. At all times during all the conversations, the Union was picketing the site, with the pickets standing or walking on the driveway in such a way as to prevent any vehicle from entering the site. The picket signs all stated that a company named "Pelliccio" paid unfair, substandard wages. Pelliccio was Hough/Loew's carpentry subcontractor

at the construction site. Pelliccio's employees are not represented by a union.

The Conversation Between Smith and Wright  
on January 3

It was early in the morning when Smith arrived. Wright was already there. According to Wright, he had been injured moments before when an employee of Hough/Loew or one of its subcontractors had deliberately driven a truck into Wright as he was standing on the driveway.

Wright's testimony describes a very brief conversation he had with Smith. Wright testified that the "nature" of his conversation with Smith was that Wright said, "Ken, this guy tried to kill me"; Smith then said, "let me make a 'phone call."

Smith recalled the interchange somewhat differently. I credit Smith, not Wright, and find that the conversation went:

SMITH: Why is the picket line up?

WRIGHT: It's an informational picket line. We're picketing Pelliccio. How can I compete with a guy like that?

SMITH: Are you going to let us go to work today?

WRIGHT: I'd let you in here, but we had a little incident here this morning. A guy came through across this picket line and I twisted my back trying to jump out of the way of the truck.

(I will discuss my understanding of the significance of this conversation, and the other conversations I describe in this part of this supplemental decision, in part III, below.)

The Conversation Between Good and Wright  
on January 3

Good arrived at the site later on the morning of January 3. He had a conversation with Wright. Smith was present for at least some of the conversation.

Good, Smith, and Wright testified about the conversation. I generally, but not entirely, credit Good's and Smith's testimony and find that the conversation went as follows, immediately following Smith's introduction of Good and Wright to one another:

WRIGHT: I got hit by a truck that crossed the picket line!

GOOD: Why is there a picket line? What's going on?

WRIGHT: It's an informational picket line. We're protesting the unfair wages that Pelliccio is paying. How can we [i.e. unionized carpentry subcontractors] compete with someone who pays substandard wages?

GOOD: Can't we work something out? We just want to work.

WRIGHT: I'm not here to resolve anything. I'm here to protest Pelliccio.

GOOD: Hough/Loew has used union trades in the past. We used a union carpentry contractor, Ceilings, Inc., on another project and we were very happy with their work. And we've gotten bids from a couple of unionized contractors on at least two up-coming projects. We know that a job will be well-manned when we have a union carpentry contractor there.



WRIGHT: I don't care about Ceilings. Why didn't a union carpentry contractor get a shot at this job? Those guys [pointing to the pickets] are out of work.

GOOD: We didn't have the opportunity to bid out the carpentry portion of the work the way we would have liked because the plans were not complete, they were constantly changing, and we were being forced in a position where we had to start work before all the plans were all completed. So we wanted to give the work to a contractor that we've used in the past, one that we trusted.

WRIGHT: Unionized carpentry contractors never get a chance at Hough/Loew work. One of the guys on the picket line says he had a conversation with Mr. Hough at his house and Hough talked anti-labor.

SMITH: That's bullshit!

GOOD: Why don't you to come back to the Hough/Loew office so we can talk about all of this?

WRIGHT: No, I can't leave the picket line. Anyway, what's the point in talking? We've been trying to get your work for years and we never get anywhere. But I expect to be talking to my boss, and I'll mention that you want to talk to somebody.

#### The Smith-McGuckin Conversation on January 4

Wright did not return to the site on January 4. Harry McGuckin, also an organizer for and agent of the Union, replaced Wright. On arriving at the site on January 4, Smith spoke to McGuckin. Their very brief exchange was as follows:

SMITH: What're you guys going to do today?

McGUCKIN: We're going to picket you.

SMITH: I want to work today.

McGUCKIN: You do what you guys have to do, and we'll do what we have to do.

(That description of the conversation is based entirely on Smith's testimony. McGuckin did not testify.)

#### The Good-Barnett Conversation on January 4

Good and Barnett conversed sometime after the Smith-McGuckin exchange. Good, Smith and Barnett testified about the conversation. Again, I generally, but not entirely, credit Good and Smith and find that the conversation proceeded this way:

GOOD: Why are you picketing?

BARNETT: [Points to one of the picket signs.]

GOOD: Isn't there some way we can work this out? I expected to hear from you or Wright yesterday. You know that you don't really have a problem with us.

BARNETT: We never got the opportunity to bid this job.

GOOD: The way we normally go about bidding work is that we like to have people that are interested in doing our work to bid to us and approach us about work. In this particular case we weren't been able to do that because the plans weren't complete when we had to start work, so we weren't able to bid it out. But we have another project that's out for bids, and out of

the three carpentry bidders, two of them are union contractors.

BARNETT: Sorbus [the owner of the property] told us that we [i.e., carpentry subcontractors whose employees are represented by the Union] would have a shot at the bidding.

GOOD: We're working for the developer, not Sorbus. Anyway, nobody at Sorbus ever told us that.

BARNETT: Can we talk about our people [i.e., members of the Union] doing the work?

GOOD: We're committed to Pelliccio, and when we commit to somebody we stand behind it.

BARNETT: Can we [the Union] talk to Pelliccio?

GOOD: That's between you and Pelliccio.

BARNETT: Yes, but you're the GC [general contractor].

GOOD: That's between you and Pelliccio. We're planning to go to work today.

BARNETT: We have to do what we have to do. I guess we're at a standoff.<sup>1</sup>

### III

The question is, what significance should be attributed to the foregoing conversations. More particularly, does anything in any of those conversations indicate a secondary objective on the part of the Union (that is, an objective of "forcing or requiring" Hough/Loew or any of its subcontractors "to cease . . . dealing" with Pelliccio). Contrarywise, does anything in those conversations indicate that the Union's objective was entirely primary.

#### Smith and Wright on January 3

Smith approached Wright and began the conversation. Wright's responses to Smith suggest a lack of any secondary intent. The picket line was an "informational picket line," Wright declared. "We're picketing Pelliccio." Wright then went on to state that he was going to use the picket line to keep "you"—presumably Hough/Loew—off the site. But Wright's stated reason for that was his earlier injury; Wright did not suggest that it had any thing to do with any Union desire to have Hough/Loew cease dealing with Pelliccio. (By that conclusion I do not intend to alter the conclusion expressed in my November 15, 1990, decision that Wright was an agent of the Union at the time of his conversation with Smith.)

#### Wright and Good on January 3

If I were to limit my consideration only to Wright's remarks themselves, I could not conclude that Wright's words evidenced a secondary objective on the Union's part.

The conversation between Good and Wright had two discrete parts. The first part had to do with the reasons the Union was picketing. That part began when Good asked why a picket line was up. Wright responded with great specificity:

<sup>1</sup> When Smith tried to drive onto the site on January 4, pickets blocked his way. Smith yelled, "let me through." According to Smith, he got no verbal response. Barnett, on the other hand, testified that he answered, "I'm not going to do anything." (That meant, Barnett testified, that he "wasn't going to stop anybody.") I credit Smith, not Barnett.

It's an informational picket line. We're protesting the unfair wages that Pelliccio is paying. How can we compete with someone who pays substandard wages?

Good, however, was unwilling to let Wright's answer stand, despite the fact it was wholly responsive to Good's question. Instead Good went on to claim a kind of good-guy status for Hough/Loew—even though Good knew that Hough/Loew had not even given any unionized carpentry contractor a chance to bid on the work at the site. That was too much for Wright, who responded to Good's claims by criticizing Hough/Loew's labor policies. But even then Wright did not link the existence of the picket line to those policies. Because of that, because Good's comments about Hough/Loew's labor policies virtually baited Wright into responding, and because it was Good who sought out Wright (rather than the reverse), it seems to me that Wright's remarks, if they are considered without taking into account the circumstances that they were obtained at the site at the time Good and Wright were conversing, do not show a secondary objective on the Union's part.

But a reasonable evaluation of Wright's words requires consideration of the fact that, as Wright was speaking to them, the pickets he was supervising were completely blocking access to the site by all vehicles. In these circumstances, Wright's statement that the picket line was "informational" was obviously disingenuous. Similarly, Wright had to have realized that the combination of the pickets' blocking of the driveway coupled with his reference to Pelliccio would be heard as a demand that Hough/Loew choose a different carpentry subcontractor, even though the words that Wright used were innocuous. That implicit demand was then made even more obvious when Wright complained about Hough/Loew's subcontracting procedures.

Smith and McGuckin on January 4

Smith, whom McGuckin knew worked for Hough/Loew, opened the conversation by asking, "[W]hat're you guys going to do today?" McGuckin responded, "[W]e're going to picket you."

Does that show a secondary objective—in that McGuckin said that the Union was going to picket "you"? I think yes, if—but only if—the fact that the pickets were blocking access onto the site is taken into account.

But if one puts aside the fact that the pickets were blocking all access to the site, I don't think so. There was only one driveway onto the site, so picketing at the driveway would, in a manner of speaking, be a picketing of anyone who wanted to enter the site. And the conversation took place outside in the cold darkness of the early hours of a January morning, circumstances not conducive to precise word selection. Thus McGuckin's "we're going to picket you" should not be deemed to have meant anything more than "we're going to picket."

Good and Barnett on January 4

The Good/Barnett conversation was much like the Good/Wright conversation. It began with a question by Good about the purpose of the picketing, continued with what amounted to a declaration by the union agent that the Union was conducting area standards picketing of Pelliccio, and

then moved on, at the behest of Good, to a discussion of Hough/Loew's labor policies.

For the reasons discussed in connection with the Good/Wright conversation, I conclude that: (1) because an evaluation of the import of Barnett's remarks must take into account that, at the time of Barnett's utterances, the pickets were blocking all access to the site, Barnett's pointing to the "Pelliccio unfair" picket signs amounted to a demand that Hough/Loew stop using Pelliccio as a subcontractor, and Barnett's complaint about Hough/Loew's bidding procedures added emphasis to that message; and (2) if that blocking of the site were put aside, Barnett's remarks would not constitute evidence of a secondary objective.

#### IV

In my November 15 decision in this matter I concluded that the Union violated Section 8(b)(4)(ii)(B) of the Act because—

the Union picketed the site in such a way as to prevent all personnel of Hough/Loew and its subcontractors from entering the site and, indeed, knowingly prevented Hough/Loew trucks from entering the site. That action, coupled with the anti-Pelliccio picket signs and the statements of Wright and Barnett that the Union's dispute was with Pelliccio, unmistakably was a deliberate communication by the Union to Hough/Loew and its subcontractors that they should cease doing business with Pelliccio.

That decision also states that "I do not interpret anything that Wright or Barnett said as evidencing any . . . secondary objective." It would have been more accurate for me to state, as I have here, that Wright's and Barnett's statements would not have evidenced a secondary objective had they not been uttered at a time when pickets were blocking access to the site.

For the reasons discussed earlier in this supplemental decision, having given further consideration to the conversations between the agents of Hough/Loew and the Union, I conclude that

1. Absent the blocking of the site by the Union's pickets, none of the remarks by the Union's agents would constitute evidence of a secondary objective.

2. Because at all relevant times the Union's pickets were blocking all access to the site, and because the meaning reasonably to be attributed to the communications by Wright to Good, by McGuckin to Smith, and by Barnett to Good, necessarily must take into account that action by the pickets, those communications amounted to demands by the Union that Hough/Loew and its other subcontractors cease doing business with Pelliccio and thus evidenced an unlawful secondary objective on the Union's part, in violation of Section 8(b)(4)(ii)(B).<sup>2</sup>

<sup>2</sup>The Board's Order remanding this proceeding to me states that "following service of the Supplemental Decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable."